IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

COMPANY PETITION NO.783 OF 2003

M/s. Eagle Industries ..... Petitioners

v/s.

M/s. Vir Alloys and Steel

Co.Pvt.Ltd ..... Respondents

K.H. Mody i/b. RMG Law Associates for the petitioner.

Mohan Raheja for the company.

CORAM: S.U. KAMDAR, J.

DATE : 10TH FEBRUARY, 2005.

P.C. :

1. In the present case the claim of the petitioner is for the sum of Rs. 1,84,669/- in respect of supply of core boxes of approximately 3 lakhs pieces. One of the terms and conditions of the agreement arrived at between the parties is reflected in the letter dated 15.6.2001 which pertains to the payment which reads as under :

"payment: 60% advance against bank guarantee and Balance after casting approval."

2. On the basis of aforesaid agreement the goods were sold and supplied by the petitioner to the respondent company. It is an admitted position that the company has paid to the petitioner a sum of Rs.2,20,000/- out of an aggregate amount of Rs.3,60,000/- and there is a balance of Rs.140,000/-. It is the case of the respondent company that the balance amount is not due and payable as the casting material in respect of the said goods have been found of inferior quality. The said dispute was raised as far back as 29.9.2001 in a letter addressed to the company and by its another letter dated 9.8.2002 which was addressed to M/s. Asian Wind Turbines Pvt. Ltd wherein it was pointed out that the casting material has not clear the test of ultrasonic level.

3. Mr. Mody learned counsel for the petitioner has vehemently contended that these terms and conditions as reflected in the letter dated 15.6.2001 has been altered and or modified. He draws my attention to a letter dated 19.9.2001, 9.8.2001 and a

letter dated 14.9.2002 and has inter-alia contended that their responsibility is only in respect of the dimensional problem and not in respect of the casting of the said material. The learned counsel for the petitioner has further contended that in so far as the casting material is concerned it is an issue which is directly concerned in respect of a contract executed between the respondent company and the said M/s. Asian Wind Turbines. According to the learned counsel for the petitioner the contract was thus substantially modified which was originally providing for payment only against casting approval. On the other hand the learned counsel for the company has contended that there is no such modification of contract. He has further contended that the liability of casting approval is also expressly on the petitioner and the same is duly reflected in the letter dated 15.6.2001. He has further contended that the company namely M/s. Asian Wind Turbines Pvt. ltd is also a company introduced by the petitioner to the respondent company and therefore the petitioner undertook the responsibility even in respect of the casting approval for the goods supplied and delivered. In view of the aforesaid position, the learned counsel for the company contends that there are triable issues.

4. I have considered the rival submissions of the parties. I am of the opinion that there is no such modification and or alteration to the original contract dated 15.6.2001 entered into between the parties. I also do not see any modification of the contract in the letters relied upon by the petitioner. The said contract expressly provides payment of the balance amount of 40% only against the casting approval. If the contention of the petitioner is accepted that he had not undertaken to provide casting material then it is not possible to understand how the balance payment has been made subject to the approval of the respondent company in respect of of the casting of the material. Apart therefrom also I find that the disputes in respect of the casting materials is raised as early as in September 2001 i.e. within a period of 3 months from the date of execution of the agreement which is on 15.6.2001. In my view in the aforesaid circumstances there are bonafide disputes raised by the company. In view thereof the present petition cannot be entertained. The petition is dismissed accordingly with no orders as to costs.

sd/-

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